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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of GTE Corporation, Transferor	)	
and Bell Atlantic Corporation, Transferee	)	CC Docket No. 98-184
For Consent to Transfer of Control	)	

SUPPLEMENTAL COMMENTS OF MCI WORLDCOM, INC.

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EXECUTIVE SUMMARY

When the Commission approved the merger of SBC and Ameritech with conditions, it emphasized that the tremendous consolidation that has already occurred among major incumbent local exchange carriers ("ILECs") would make it more difficult to obtain approval of further mergers among the few remaining major ILECs. *SBC-Ameritech Order* ¶¶ 185, 362. Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") fail to carry that burden. Indeed, the proposed merger of Bell Atlantic and GTE would produce the worst of both worlds: no more competition out-of-region than would occur without the merger, and even less competition in-region.

The Applicants promise to "unleash" and "jumpstart" local competition and "attack other Bell company strongholds" across the country, but if, and only if, Bell Atlantic can use GTE as its "enabler" and GTE has access to Bell Atlantic's "anchor customers." Application for Transfer of Control, at 1, 6-7 ("BA-GTE Appl."). However, neither Bell Atlantic nor GTE is by itself too small, too poor, and too insular to compete as a new entrant in local markets across the country; indeed, their position and experience as incumbents give them advantages that competitive local exchange carriers ("CLECs") lack. Like CLECs, Bell Atlantic and GTE can each put its money where its mouth is by investing billions of dollars to pry open the local markets dominated by other incumbent monopolists. As the Commission found in the case of the SBC-Ameritech merger, the merger is essentially irrelevant to the likelihood that Bell Atlantic and GTE will compete outside their current regions.

Lacking any real upside, the Bell Atlantic-GTE merger presents a severe downside because it would cause all of the public interest harms that the Commission found would result from the merger of SBC and Ameritech. Indeed, the consumer harms would be greater because

of the previously completed mergers of major ILECs. The Bell Atlantic-GTE merger would raise barriers to local competition within the Applicants' regions by permitting them immediately to provide facilities-based local service to a higher percentage of locations of large businesses without any additional investment or reliance on out-of-region ILECs. This would increase GTE's and Bell Atlantic's advantage over CLECs that must undertake the lengthy and expensive process of building out their networks to many of these diverse locations and that depend on the ILEC to reach the rest. The result would be that Bell Atlantic and GTE would lock up the business of multi-location business customers headquartered in their regions.

Equally important, the merger would eliminate GTE as a significant potential entrant into local markets in Bell Atlantic's region, and vice versa. The public interest would not be served by eliminating competition between GTE, with long-standing pre-merger plans to compete against Bell Atlantic, and Bell Atlantic, which now takes the position that it needs to compete out-of-region in order to survive. Furthermore, the merger would significantly reduce the ability of regulators, and competitors, to benchmark the performance of GTE and Bell Atlantic. The elimination of yet another large ILEC through merger would leave fewer points of comparison among major ILECs.

The Commission should also examine the consequences for competition among Internet service providers if this merger is allowed to proceed. The merger of two companies that provide Internet access to roughly one-third of all Internet customers in the United States would automatically increase the share that each company now has individually. To the extent that xDSL-based services become a predominant method of providing access to the Internet, Bell Atlantic's and GTE's continuing control over these advanced services, as well as over other local services used to access the Internet, could enable them to achieve significant power over Internet

services, especially if the merged firm is permitted to employ anticompetitive tying arrangements and is not required to make a complete and effective divestiture of GTE Internetworking. The Commission should consider whether Bell Atlantic and GTE have shown that the combined company's position in the Internet would be so small as to eliminate the concern they raise with respect to the MCI WorldCom-Sprint merger.

Bell Atlantic and GTE's proposed conditions do not solve the problems. Bell Atlantic failed to comply with the conditions imposed by the Commission to ameliorate the anticompetitive effects of the Bell Atlantic-NYNEX merger, and early returns on SBC-Ameritech's implementation of their merger conditions are troubling. The best way to protect the public interest would be to deny the application, or at least to require Bell Atlantic and GTE to comply with the conditions *before* they merge. At a minimum, the Commission should impose conditions as stringent and comprehensive as those imposed on SBC and Ameritech, and it should reject Bell Atlantic and GTE's recent proposal to water them down. The Applicants' proposed conditions should be strengthened with respect to advanced services, uniform operations support systems, most favored nation requirements, the performance plan, and compliance and enforcement, as well as tying issues.

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SUPPLEMENTAL COMMENTS OF MCI WORLDCOM, INC.

Pursuant to the Public Notice released on January 31, 2000, MCI WORLDCOM, Inc. ("MCI WorldCom") hereby submits its supplemental comments opposing the application of Bell Atlantic Corporation ("Bell Atlantic") and GTE Corporation ("GTE") for approval of their proposed merger, and discussing the Applicants' proposed conditions.

I. THE MERGER WOULD HARM THE PUBLIC INTEREST BY REDUCING COMPETITION TO PROVIDE LOCAL, LONG DISTANCE, AND INTERNET SERVICES.

The Commission must determine whether Bell Atlantic and GTE have carried their burden to prove that their merger would affirmatively serve the public interest.[1] The Applicants have failed to carry that burden, much less the "additional burden" resulting from approvals of earlier mergers among major incumbent local exchange carriers ("ILECs"). *See SBC-Ameritech Order*

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[1] *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, 14 FCC Rcd 14712, ¶¶ 46-54 (1999) ("*SBC-Ameritech Order*"); Comments of MCI WorldCom, Inc., at 1-3 & n.2, *In the Matter of GTE Corporation, Transferor and Bell Atlantic Corporation, Transferee For Consent to Transfer of Control* (filed Nov. 23, 1998) ("MCI WorldCom Comments"). The Applicants' challenge to the Commission's jurisdiction is groundless. MCI WorldCom Comments 3-5.

¶¶ 185, 362. Their proposed merger would cause each of the three types of harm that Commission found would result from the SBC-Ameritech merger. *Id.* ¶¶ 55-62.

By any measure, Bell Atlantic and GTE still retain monopoly control over local exchange access in their respective regions, despite some encouraging developments in New York. *See* MCI WorldCom Comments 6-13. Bell Atlantic's failure to comply with the conditions imposed by the Commission in connection with its merger with NYNEX is clear evidence of its ability and incentive to prevent local competition from taking root in its region, *id.* at 7-11, and the dramatic decline in Bell Atlantic's performance in New York as soon as it received section 271 authority in New York provides even greater cause for concern.[2] GTE has been an effective and obdurate foe of local competition. *Id.* at 12-13. The Applicants' monopoly control extends to broadband as well as narrowband local telecommunications services. Neither Bell Atlantic nor GTE has met its obligations under section 251 to provide unbundled access to xDSL-capable loops and collocation on reasonable and nondiscriminatory terms, including cost-based rates. *Id.* at 44-45. Competitive local exchange carriers ("CLECs") cannot effectively compete to provide advanced local services both because of this failure to comply with section 251, and because of the Commission's decision not to allow (except in limited circumstances) unbundled access to ILEC packet switching, even though denial of unbundled access admittedly impairs new entrants' ability to compete.[3]

If the Commission credits Bell Atlantic and GTE's claim that they will compete out-of-region if they merge, the Commission should find, just as it found with respect to SBC and

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[2] *See* New York Public Service Commission, *Order Directing Improvements to Wholesale Service Performance*, Cases 00-C-0008 and 00-C-0009 (Feb. 11, 2000) (available at <http://www.dps.state.ny.us>).

[3] *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, Third Report and Order & Fourth Notice of Proposed Rulemaking, FCC 99-238 at ¶ 309 (rel. Nov. 5, 1999) ("*UNE Remand Order*").

Ameritech, that Bell Atlantic and GTE will compete in each other's regions if they do not merge. *See SBC-Ameritech Order* ¶¶ 267-300. The merger does not "enable" Bell Atlantic or GTE to do anything it cannot already do to compete out-of-region, and each can and will compete out-of-region, including against each other, to the extent it is in its interest to do so. MCI WorldCom Comments 13-29. Indeed, GTE had widely publicized plans to compete out-of-region prior to announcement of its merger with Bell Atlantic, and was positioning itself to implement them, including in Bell Atlantic's region. *Id.* at 22-24. If CLECs with a fraction of Bell Atlantic's size, scope, revenues, profits, systems, and experience can afford to compete in areas where they do not have a monopoly, then so too can Bell Atlantic and GTE. Bell Atlantic and GTE do not face an all-or-nothing choice between competing in all major out-of-region markets if the merger is approved versus competing in none without the merger.[4] Entry by a major ILEC into another's territory, even on a somewhat more limited scale, would have substantial competitive benefits that existing CLECs cannot produce. *SBC-Ameritech Order* ¶¶ 84-85; MCI WorldCom Comments 21-22.

Stripped of the rhetoric, Bell Atlantic and GTE's plan to "attack other Bell company strongholds" (BA-GTE Appl. 1) is in fact a strategy to selectively serve the out-of-region locations of large business customers with locations concentrated in Bell Atlantic's or GTE's region, and thereby to lock up the customers accounting for a disproportionate share of all in-region local traffic, revenues, and profits. MCI WorldCom Comments 25-29. The merger would

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[4]The Commission should scrutinize with special care the Applicants' assertions about their competitive plans (and on other topics) in light of serious questions about Bell Atlantic's candor about its plans to compete against NYNEX. *See Applications of NYNEX Corporation, Transferor, and Bell Atlantic Corporation and Its Subsidiaries, Transferee, For Consent to Transfer Control of NYNEX Corporation and Its Subsidiaries*, 12 FCC Rcd 19985, ¶¶ 75, 243 (1997) ("*BA-NYNEX Order*"). *See generally* MCI WorldCom Comments 58-60.

enable Bell Atlantic and GTE to meet the demand for facilities-based local service across the nation not, as CLECs do, by investment alone, but by consolidating their ubiquitous monopoly networks. By reducing Bell Atlantic-GTE's dependence on out-of-region ILECs, and by increasing CLECs' dependence on a single mega-BOC for multi-location customers headquartered in its combined region, the merger would make it harder for CLECs to compete with Bell Atlantic-GTE to provide facilities-based local service to these customers. *See generally SBC-Ameritech Order* ¶¶ 186-247 (discussing increased incentive and ability of merged ILECs to discriminate). By making it harder for CLECs to compete for large business customers, the merger will decrease competition for *all* customers — and for their long-distance as well as local business. MCI WorldCom Comments 29, 36-38; *see SBC-Ameritech Order* ¶¶ 212-35.

The proposed merger would also undermine comparative practices analysis, or benchmarking, among large ILEC as a crucial market-opening tool, and increase the likelihood of coordinated anticompetitive behavior by the four remaining major ILECs. *See SBC-Ameritech Order* ¶¶ 101-85.[5] The Bell Atlantic-GTE merger would threaten even greater diminution of the ability of regulators, customers, and competitors to benchmark because there are even fewer incumbent LECs left to provide meaningful comparisons. *See* MCI WorldCom Comments 32-36 and Ex 2 (Joint Declaration of Marcel Henry and John Trofimuk).

The Commission should also consider whether the merged company would exploit its control over narrowband and broadband local access to the Internet to endanger currently robust competition among Internet service providers. In their comments on the merger of MCI

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[5] The merger would harm market performance by generally increasing the potential for coordinated interaction by firms remaining in the post-merger market. *See SBC-Ameritech Order* ¶¶ 156-58; *see generally BA-NYNEX Order* ¶ 121. The merger would make it much easier and more likely for the few remaining major ILECs to continue the non-aggression pact under which they do not compete in each other's regions. MCI WorldCom Comments 30-32.

WorldCom and Sprint, both Bell Atlantic and GTE argue that a dominant Internet provider has the ability and incentive to impede Internet competition.[6] Simply as a result of the merger, Bell Atlantic-GTE would have a significantly greater share of Internet traffic than either company would have without the merger, and the merged company's Internet customers would be locked in by anticompetitive conduct such as tying Internet and voice services to advanced telecommunications.[7] In the SBC-Ameritech merger proceeding, the Commission agreed that the merger of two major ILECs would give the combined entity an increased incentive and ability to discriminate against rivals providing advanced services, but found "somewhat attenuated" the link between SBC-Ameritech's potential control over xDSL-based services and market power over

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[6] Bell Atlantic Corporation's Petition to Condition Approval on Adequate Divestiture of Internet Backbone Assets, and Petition of GTE Service Corporation and GTE Internetworking To Deny Application or Condition Merger on Fully Effective Internet Backbone Divestiture, both filed on Feb. 18, 2000 in *In the Matter of Joint Application of MCI WorldCom, Inc., and Sprint Corporation for Consent to Transfer of Control*, CC Docket No. 99-333. Bell Atlantic's and GTE's objections concerning Internet backbone services are misplaced because the merger will not jeopardize the intense competition among the large and growing number of companies currently providing these services. In contrast, Bell Atlantic's and GTE's power arises out of their control over the first and last mile of Internet connections, for which effective competition does not exist, in part because the lack of unbundled access to ILEC packet switching under the *UNE Remand Order* admittedly impairs the ability of CLECs to provide advanced services. Moreover, Bell Atlantic and GTE expect to control the Internet backbone that carries all of their customers' Internet traffic within five years of their proposed sale of a limited interest in GTE Internetworking, *see* Supplemental Filing of Bell Atlantic and GTE, at 29-54 (filed Jan. 27, 2000) ("BA-GTE Supp. Filing") and Bell Atlantic has the ability to satisfy the requirements of section 271 as soon as it chooses to do so.

[7] For example, Bell Atlantic strongly encourages, if not requires, its ADSL customers to buy its Internet services. *See generally* MCI WorldCom Comments 45-46, 50-52. Moreover, recognizing along with the Commission that denial of unbundled access to packet switching and DSLAMs impairs CLECs' ability to provide mass market advanced services in competition with ILECs (*UNE Remand Order* ¶ 309), ILECs have attempted to leverage their power over advanced services to impede competition to provide voice services by refusing to sell advanced services to customers who purchase voice services from CLECs. Petition of MCI WorldCom for Clarification, at 3-4, *In the Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996* (filed Feb. 17, 2000) ("MCI WorldCom Clarification Petition").

Internet services. *SBC-Ameritech Order* ¶ 249. However, completion of the SBC-Ameritech merger heightens the risk posed by another merger of major ILECs, and even if the combined Bell Atlantic-GTE will not have unilateral power in the national market for Internet services, this merger would increase the likelihood of coordinated interaction with the other mega-BOC, SBC-Ameritech. *See* MCI WorldCom Comments 49-50. At a minimum, Bell Atlantic and GTE have not shown that, especially without termination of anticompetitive tying arrangements and a complete and effective divestiture of GTE's established Internet business, the combined company's position in the Internet would be so small as to eliminate the concern they raise with respect to the MCI WorldCom-Sprint merger.

II. THE COMMISSION SHOULD DISAPPROVE THE MERGER OR AT LEAST IMPOSE STRICTER CONDITIONS THAN THOSE PROPOSED BY THE APPLICANTS.

For all of these reasons, the proposed merger between Bell Atlantic and GTE raises a variety of serious threats to competition in local, long-distance, and Internet markets. The most straightforward way to eliminate these threats, and to do so without regulatory conditions that are at best difficult and expensive to enforce, would be for the Commission simply to disapprove the merger.

To the extent the Commission considers conditional approval, the Commission should seriously examine structural conditions that would affirmatively boost competition, such as loop divestiture. An alternative to structural conditions would be behavioral conditions that require Bell Atlantic-GTE to take specified procompetitive actions or prohibit it from taking specified anticompetitive actions. It is difficult to imagine any reasonably enforceable behavioral conditions that, individually or in combination, would be sufficient to make this merger of monopolists affirmatively pro-competitive. Unlike structural conditions, behavioral conditions require on-

going regulatory oversight and enforcement because their goal is to make monopolists act contrary to their basic economic interests. Indeed, Bell Atlantic has not complied with the behavioral conditions imposed in connection with its merger with NYNEX. *See* MCI WorldCom Comments 7-11.

The Applicants propose to adopt the SBC-Ameritech conditions, with some significant deletions. In general, the SBC-Ameritech conditions are the minimum that the Commission should accept because the Bell Atlantic-GTE merger would, without conditions, cause the same types of harm to the public interest as the SBC-Ameritech merger, and the degree of harm would be more severe because fewer major ILECs remain now than when SBC and Ameritech obtained Commission approved. Greater consolidation among local monopolists, combined with experience with the SBC-Ameritech merger conditions in the last few months and with the Bell Atlantic-NYNEX merger conditions, counsel for strengthening of some of the SBC-Ameritech conditions. In particular, Bell Atlantic and GTE should generally be required to comply with these conditions *before* they merge. Establishing pre-conditions would avoid the problems in developing a realistically aggressive timetable for post-merger compliance — and then holding the merged firm to it. Once two major ILECs merge, they lose their pre-merger incentive to comply with the conditions, and the merged company will come up with one reason after another why compliance is infeasible or should be delayed.

The following discussion focuses on changes to the SBC-Ameritech conditions — both changes that Bell Atlantic and GTE propose to weaken the conditions, and changes necessary to make these conditions more effective. In particular, MCI WorldCom discusses changes and clarifications in the conditions relating to advanced services, uniform operations support systems ("OSS"), most favored nation requirements, the performance plan, and compliance and enforce-

ment.[8] In addition, any conditions should address tying of advanced local services with both Internet and local voice services.

Advanced Services

Bell Atlantic and GTE generally propose the same advanced services conditions, including a quasi-separate affiliate requirement, that the Commission imposed on SBC and Ameritech. Experience with SBC-Ameritech indicates the need for tougher enforcement provisions, especially if compliance with this condition is not required pre-merger. In particular, the Commission should require stricter, regular reporting requirements so that regulators and CLECs know on a timely basis what kind of service the ILEC is providing to its advanced services affiliate.

The Commission should clarify that when a Bell Atlantic or GTE ILEC transfers to an affiliate the responsibility to provide advanced services, the affiliate assumes the ILEC's obligations under existing interconnection agreements relating to advanced services. ILECs have entered into agreements with CLECs specifying the terms and conditions on which they provide certain UNEs related to advanced services, and make these services available for resale. The

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[8] The Commission should make explicit, as it did in the context of the SBC-Ameritech conditions, that conditions applicable to Bell Atlantic-GTE (1) are a floor and not a ceiling, (2) do not constitute an interpretation of the Communications Act or any other federal statute, and (3) do not limit the authority of state commissions to impose or enforce other requirements. *SBC-Ameritech Order* ¶¶ 356-58. The fact that MCI WorldCom does not discuss certain proposals does not mean that it agrees with the Applicants' arguments. For example, Bell Atlantic and GTE contend that the lack of any prospect of competition between the two companies eliminates any need for promotional discounts on unbundled loops and resold services. BA-GTE Supp. Filing 27. These discounts are of limited practical value to CLECs. Comments of MCI WorldCom, Inc. Concerning Possible Conditions, at 51-54, *In the Matter of Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from Ameritech Corporation, Transferor, to SBC Communications, Inc., Transferee*, CC Docket No. 98-141 (filed July 19, 1999) ("MCI WorldCom SBC-Ameritech Merger Condition Comments"). But the Applicants' rationale for dropping this condition is invalid because there is good reason to believe that Bell Atlantic and GTE would independently compete out of region if they did not merge — at least if there is reason to credit their claim that they will compete out of region if they do merge. *See* MCI WorldCom Comments 13-25.

ILEC should not be able to avoid these contractual obligations by transferring to its advanced services affiliates responsibilities to provide these services, and the affiliate should honor the interconnection agreement for its remaining term.

The Commission should also clarify two aspects of the affiliate's section 251(c) unbundling obligations. *First*, the Commission has made clear that the affiliate is subject to section 251(c)(3) obligations when the ILEC transfers a facility that is deemed to be an unbundled network element under section 251(c)(3). *SBC-Ameritech Order* ¶ 365 n.682. The same rule should apply when the affiliate acquires such an element from a third party instead of from the ILEC; this requirement prevents the ILEC from nullifying its unbundling obligations by transferring to an affiliate the function that it would otherwise perform to provide advanced services. *Second*, to the extent the affiliate is subject to unbundling obligations, CLECs have the same rights against the affiliate under section 252(i) to "pick and choose" terms and conditions that they would have if the ILEC continued to provide advanced services.

MCI WorldCom submits that two additional substantive changes should be made. *First*, consistent with the non-discrimination principle, the advanced services affiliate should not get any preferential treatment, in particular, the exclusive right to line-sharing with the incumbent for an indefinite period. *Second*, the affiliate should be subject to the same resale requirements as the ILEC that transfers the advanced services business to the affiliate. *See generally* MCI WorldCom SBC-Ameritech Merger Condition Comments 40-41.

The Commission should reject the Applicants' proposal to delete note 4 of the SBC-Ameritech merger conditions, which states that "the Commission does not regard the separate affiliate as a per se successor or assign based on the relationship described in these Conditions" and that there is only "a rebuttable presumption that the separate affiliate will not be a successor

or assign." Bell Atlantic and GTE do not and cannot justify an irrebutable presumption that the affiliate is not a successor or assign, regardless of the actual relationship between the affiliate and Bell Atlantic-GTE ILECs.

Uniform OSS

MCI WorldCom strongly endorses the principle of uniformity in OSS including business rules,[9] but Bell Atlantic and GTE's proposal to implement this principle should be modified in significant respects.

First, Bell Atlantic-GTE's OSS should be uniform between Bell Atlantic's and GTE's regions, as well as within each Applicant's region. The Applicants claim that it is too expensive to make the systems uniform between their regions, but their claim appears to be greatly overstated. While there are costs involved in creating uniformity between the regions (just as there will be for SBC-Ameritech), the Applicants' processes are similar enough to make the task manageable. For example, both Bell Atlantic and GTE already accept data through the same forms (*e.g.*, local service requests ("LSRs") and access service requests ("ASRs")), which other ILECs use as well.[10] Moreover, uniformity of interfaces between Bell Atlantic and GTE regions would lead to greater efficiencies for Bell Atlantic and GTE themselves. In proceedings to implement the uniform interface requirement of the Bell Atlantic-NYNEX merger conditions, Bell Atlantic conceded that it benefits from uniformity within its region. For the same reason, GTE

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[9] MCI WorldCom continues to believe that business rules are, and should be defined as, part of the interfaces that should be uniform. The proposed conditions require uniformity in business rules but treat it as if it were separate from uniformity in interfaces.

[10] Paragraph 22 contemplates that Bell Atlantic-GTE may deploy enhancements to OSS in advance of industry standards. The condition should make clear that any decision by Bell Atlantic-GTE to do so should not come at the cost of prompt implementation of industry standards when they are announced.

ILECs already use the same systems and processes in all states.[11] By lowering entry barriers for local competitors and thereby enabling consumers to enjoy more rapid and extensive local competition, and by reducing the harm that the proposed merger would cause, the requirement that Bell Atlantic-GTE make interfaces uniform across the combined region would generate benefits far greater than its costs.[12]

Second, the condition should specify the starting point for work on uniform OSS. At a minimum, Bell Atlantic and GTE should start with the OSS that Bell Atlantic is currently using for pre-ordering and ordering. Paragraph 18 should specify non-exclusive examples of the versions of EDI (*e.g.*, LSOG 4, EDI 10) and of CORBA that the Applicants will implement, and it should make clear that the listed examples of versions of GUI (*e.g.*, GUI Version 3 and WISE 1) are not exclusive. The condition should also specify the types of UNEs that uniform OSS will support (including UNE-P, UNE-L with local number portability, and DSL-related UNEs), so that unnecessary disputes about the scope of collaboratives can be avoided.

Along the same lines, experience with the SBC-Ameritech merger conditions demonstrates that the conditions should specify what Bell Atlantic-GTE's initial plan for uniform OSS and business rules in paragraph 18 should contain. It does not help CLECs to receive only a high level status report on what systems are already in place and when Bell Atlantic-GTE will provide

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[11] Testimony of Edward C. Beauvais, GTE, at 13, *In re Commission Investigation into Procedures and Methods Necessary to Determine Whether Interconnection, Unbundled Access, and Resale Services Provided by Incumbent Local Exchange Carriers Are Least Equal In Quality to That Provided by the Local Exchange Carrier to Itself or to any Subsidiary, Affiliate, or Any Other Party*, Docket No. 97-9022 (Public Utilities Commission of Nevada, dated March 15, 1999).

[12] Consistent with MCI WorldCom's statements in California proceedings, Bell Atlantic and GTE should manage the transition to uniform interfaces in a way that avoids disruption of existing interfaces. *Cf.* BA-GTE Supp. Filing 23-24 & n.16.

further information about its plans to modify existing systems or deploy new systems. The plan must be concrete and specific enough about planned systems and associated business rules to enable CLECs to evaluate and build to those systems.[13]

Third, paragraph 18 could be interpreted to contemplate modification of the existing deadlines for Bell Atlantic to make interfaces uniform within its own region. The Commission's conditions on the Bell Atlantic-NYNEX merger already require Bell Atlantic to establish uniform interfaces, *BA-NYNEX Order,* App. C, ¶ 2(c), and Bell Atlantic is in the process of addressing this requirement within the framework established in the Commission's complaint proceeding referenced in paragraph 19.[14] There is no justification for tampering with Bell Atlantic's current obligations simply because it wants to merge with another ILEC. The Commission should make explicit that nothing in any order approving the merger excuses or modifies the obligations established for Bell Atlantic in these proceedings, and any new deadline or timetable applies only to obligations that all affected carriers agree are not covered by pre-existing proceedings and agreements.

Fourth, Bell Atlantic-GTE does not need 12 months, as paragraph 20 provides, to implement throughout the combined region the change management process that has already been developed in New York. The Applicants should comply at the time of the merger close or at least within 30 days thereafter throughout the Bell Atlantic region, if not in GTE territories as well.

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[13] On February 15, 2000, the Illinois Commerce Commission ("ICC") rejected the OSS plan of record ("POR") submitted by SBC-Ameritech pursuant to the ICC's SBC-Ameritech merger order. The ICC found that the POR was deficient in that it neither set forth the specific standards that Ameritech-Illinois intended its OSS to meet, nor contained enough detail to allow the ICC or CLECs to assess Ameritech's OSS plans. *See* Feb. 17, 2000, Letter from Richard. L. Mathias, Chairman of the ICC, to Sam McClerren, ICC staff.

[14] *MCI WorldCom, Inc. and AT&T Corp. v. Bell Atlantic Corp.*, File No. EAD 99-003.

Fifth, paragraph 21 should authorize the arbitrator to issue injunctive relief, including specific remedies such as specific interface requirements or business rules, and increased penalties for continued noncompliance if lesser remedies prove inadequate. The power to issue orders implementing the merger condition and to sanction violations of the conditions and related orders is critical to achieving the goals of uniform OSS requirement. In the agreement settling the complaint over Bell Atlantic's compliance with the uniform interface conditions in the Bell Atlantic-NYNEX merger order, Bell Atlantic agreed to give the arbitrator such power. In addition, the amount of the payments should be increased and not subject to any cap.[15] Finally, Bell Atlantic should not be able to thwart a CLEC's right to request arbitration by contending that its non-compliance is insubstantial. The term "substantial compliance" is the type of ambiguous language that could lead, as it did with the Bell Atlantic-NYNEX merger conditions, to unnecessary litigation.

Most Favored Nation Provision

MCI WorldCom agrees that each Bell Atlantic-GTE ILEC should offer the same interconnection arrangements to any CLEC that any other Bell Atlantic-GTE ILEC provides. However, Bell Atlantic and GTE propose to water down an already weak most-favored-nation ("MFN") condition by not giving a CLEC the right to include in a Bell Atlantic interconnection agreement a term in a GTE agreement, and vice versa. Instead, the Commission should strengthen this condition by closing the loopholes in the SBC-Ameritech MFN condition that

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[15] Payments for non-compliance should cover the period beginning with the initial non-compliance, not from a later date such as when the arbitrators reach a decision, as paragraph 23 provides. Nor should damages cease when the party that committed the violation unilaterally decides that it is in compliance, as the Applicants propose here. The end date should be the date on which all parties agree or when a neutral arbitrator determines Bell Atlantic-GTE achieved compliance.

prevent this condition from achieving its goals. A CLEC should be able to obtain in any Bell Atlantic-GTE state any term or condition in any interconnection agreement to which a Bell Atlantic-GTE ILEC is party — whether the ILEC was formerly part of Bell Atlantic or of GTE, and whether the agreement was negotiated or arbitrated.

Bell Atlantic and GTE argue for narrowing this condition because their "merger is a true merger of equals and not an outright acquisition" like SBC-Ameritech. BA-GTE Supp. Filing 26-27. But regardless of the accuracy of that contention, it is irrelevant. The MFN provision is intended to counteract the loss of Bell Atlantic and GTE as a local competitor in the other's territories and as a benchmark for the other. These anticompetitive effects occur whether the merger is a merger of equals or unequals, and they occur whether an interconnection agreement is negotiated or arbitrated. For example, before the merger, differences in Bell Atlantic's and GTE's positions might enable a CLEC to obtain in a Bell Atlantic agreement a provision that GTE opposed in negotiations or arbitrations, and because the merger eliminates the ability to play Bell Atlantic and GTE against each other, the CLEC should have the opportunity post-merger to obtain from the merged company any arrangement that it obtained pre-merger from either company through negotiation or arbitration. Treating negotiated and arbitrated agreements differently is also irrational because Bell Atlantic or GTE is likely to agree in negotiation in one state to a provision that it fights in another state only because it expected to lose the issue in arbitration in the first state. Indeed, the exclusion of arbitrated agreements from the MFN provision does not simply fail to correct an anticompetitive effect of the merger; it is affirmatively anticompetitive because it gives Bell Atlantic-GTE a new incentive not to agree to a term in on-going or future negotiations — the same incentive that Ameritech has acknowledged in industry meetings.

The Applicants propose to add a sentence to this condition (in paragraphs 32 and 34) allowing them to modify agreements to reflect alleged "differences caused by state regulatory requirements, product definitions, network equipment, facilities and provisioning, and collective bargaining agreements." (They also propose to insert the same language in the condition concerning multi-state interconnection and resale agreements.) This proposed addition apparently expands the proviso qualifying Bell Atlantic-GTE's MFN obligation where it is infeasible or inconsistent with state laws and regulatory requirements to provide the same arrangements. Bell Atlantic and GTE offer no explanation or justification for this widening (based on some factors within their unilateral control) of an already substantial loophole, and their proposal should be rejected. In paragraph 34, the Applicants seek to inflict on CLECs terms and conditions that the Applicants contend are reasonably related "as determined in part by the nature of the corresponding compromises between the parties to the underlying interconnection agreement." The Applicants' after-the-fact claims about the nature of compromises should not determine whether a term or condition is reasonably related to another.

Performance Plan

Bell Atlantic and GTE's proposed performance plan does not go nearly far enough to ensure that Bell Atlantic-GTE would provide adequate service to CLECs. The proposed plan would not undo the anticompetitive effects of the merger because of the cumulative effects of its major defects, including payments insufficient to provide deterrence or compensation for poor performance, and omission and weakening of critical standards that states have required Bell Atlantic or GTE to meet.

Remedy Deficiencies. The Applicants' proposal is, for the most part, a per-occurrence plan. The costs of poor performance are more than the harm to an individual CLEC caused by

any individual occurrence. Inadequate performance discourages CLECs from entering the market or ramping up to competitive volumes, harms CLECs' reputations, and generally deters the overall development of competition. However, the Bell Atlantic-GTE proposal will not have a sufficient deterrent effect because individual payments are too low and payment levels are capped even for thousands of violations.

First, the proposed remedy amounts are too low to discourage Bell Atlantic-GTE from providing substandard service to the CLECs. Bell Atlantic-GTE rates certain measures as high, medium, or low, and assigns remedies accordingly. The remedies for poor performance are applied quarterly, not monthly, and do not increase for even more long-standing poor performance — a principle in the plan adopted by the Texas Public Utility Commission, although the monthly increases there are not great enough to deter persistent poor performance. The proposal also contains no per-measure remedies for metrics that typically have low monthly volumes, such as collocation. In addition, the remedy amounts for individual measures vary by individual states even though the harm to competition, and the adequacy of the liability, do not vary by state, and the Applicants offer no justification for different liabilities in different states for the same problem. These problems are not merely theoretical: Southwestern Bell missed a number of key measures but paid a total of $2,050 in remedies in November 1999 and $400 in December 1999.[16]

Second, Bell Atlantic and GTE propose to cap total payments, thereby attenuating the already minimal impact of the low per-occurrence remedies. As Bell Atlantic-GTE approaches or

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[16] Comments of MCI WorldCom, Inc., on the Application by SBC for Authorization To Provide In-Region, InterLATA Services in Texas, at 68, *In the Matter of Application by SBC Communications, Inc. for Provision of In-Region, InterLATA Services in Texas*, CC Docket No. 00-4 (filed Jan. 31, 2000) ("MCI WorldCom Texas 271 Comments")

passes the cap, its incentive to provide acceptable performance diminishes and then disappears. Overall, caps on remedy amounts dilute any effectiveness of penalties as the number of misses increases.[17] The Commission should at least require the Applicants to incorporate a provision of the New York plan allowing the Commission to reallocate remedies to address severe performance deficiencies or add new measures if necessary to deter discrimination.

Dropped and Diluted Measures. States in which Bell Atlantic and GTE operate require more than twice the number of measures than Bell Atlantic and GTE propose in their merger plan. For example, in California, GTE has agreed to 43 measures, but the merger proposal includes only 18 measures for GTE. In New York, Bell Atlantic agreed to over 40 measures, but the plan in this proceeding only covers 20 measures for Bell Atlantic. The Applicants offer no justification for proposing fewer measures than the various state commissions have determined are critical to competition in individual states. Omitted measures include: (1) measures for virtual collocations and augments like the one applicable to Bell Atlantic in New York and GTE in California; (2) the

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[17] MCI WorldCom also continues to urge that (1) remedy payments be made to CLECs rather than the U.S. Treasury, (2) that payments begin whenever substandard performance occurs, and not start only nine months after the merger close date, and (3) Bell Atlantic-GTE should make payments if its performance is inadequate for any month (and not just for three consecutive months). *See* MCI WorldCom SBC-Ameritech Merger Condition Comments 20. The Commission should also examine deficiencies that MCI WorldCom and the Department of Justice identified in the section 271 proceeding concerning New York. Like Bell Atlantic's section 271 application, the Bell Atlantic-GTE merger plan proposes "outs" for certain clustering — Event Driven Clustering (Cable Failure); Location Driven Clustering (Facility Problems); Time Driven Clustering (Same Day Events — and for "CLEC Action." The Department of Justice criticized these provisions. Evaluation of the United States Department of Justice, at 39-40, *In the Matter of Application by Bell Atlantic-New York for Authorization to Provide In-Region, InterLATA Service in New York*, CC Docket No. 99-295 (filed Nov. 1, 1999). *See also In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404 at ¶ 441 n.1355 (rel. Dec. 22, 1999) (expressing concern about vagueness of provision allowing Bell Atlantic to seek waiver from penalties for "unusual" or "inappropriate" CLEC behavior).

change management measures included in Bell Atlantic's New York state plan (which Bell Atlantic recently violated by a wide margin); (3) provisioning completion notices and billing completion notice measures included in Bell Atlantic's New York plan and GTE's California plan; and (4) a line sharing measure like the one that the California commission recently required GTE to incorporate or that this Commission included in the SBC-Ameritech merger conditions. *See SBC-Ameritech Order*, App. C, ¶ 10 (requiring addition of line sharing measurement or sub-measurement).

Bell Atlantic and GTE have also departed from prior state commitments by proposing weaker standards than various state commissions have established. For example: the standard interval for fully electronic Firm Order Commitments ("FOCs") is 20 minutes in California, but Bell Atlantic and GTE propose to use Bell Atlantic's more lenient New York standard of 95% in 2 hours; the California standard for interconnection FOCs is 5 business days, but Bell Atlantic and GTE chose the more lenient New York standard of 10 days; and although California requires GTE to meet the standards for response time for space availability, price, and schedule of collocations 100% of the time, Bell Atlantic and GTE propose the more lenient 95% standard from New York.

Comparative practices analysis, which the merger would undermine, dictates use of the best practice in both regions. The Commission should restore missing measures and strengthen diluted ones.[18]

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[18] The Commission should also fix the problems that MCI WorldCom identified in the section 271 proceeding concerning Texas that are included in the Bell Atlantic-GTE proposal, such as application of the z-test for benchmark measures. *See* MCI WorldCom Texas 271 Comments 63-76; *see also* MCI WorldCom SBC-Ameritech Merger Condition Comments 18.

Finally, especially if the Commission does not substantially strengthen the performance plan proposed by Bell Atlantic and GTE, it should make clear that the performance-related merger conditions are intended only to "offset or prevent some of the merger's potential harmful effects" and are "not designed or intended as anti-backsliding measures for purposes of section 271" and that "performance programs that are being developed by state commissions in the context of section 271 proceedings serve a different purpose and may be designed to cover more facets of local competition and to prevent a BOC from backsliding on section 271 obligations." *SBC-Ameritech Order* ¶¶ 380, 481.

Compliance and Enforcement

The proposed conditions for Bell Atlantic-GTE, like the conditions adopted in the SBC-Ameritech proceeding, require audits (both collocation-specific and more generally) to be performed only on an annual basis, and information obtained in the audit (such as information about the ILEC's performance in dealings with its advanced services affiliate) to be disclosed, if at all, only months after the audit is completed. The result is that serious problems could continue for more than a year without detection or enforcement action. At a minimum, audits should be conducted more often than annually, and the results should be reported forthwith, including to CLECs subject to an appropriate protective order to the extent necessary.[19] MCI WorldCom proposes that the audits be conducted quarterly and that at least initial results be promptly released for comment. Problems that can be detected only thorough audits need to be surfaced

[19] Without any justification, Bell Atlantic and GTE actually propose in their paragraph 29 to have the initial audit of collocation compliance completed *later* than SBC-Ameritech did.

quickly because of the compelling interest in quickly opening local markets to competition, and because of the speed with which technology and consumer expectations are changing.[20]

In addition, the Commission should consider having its staff participate regularly, actively, and substantively in industry negotiations. Experience with workshops and collaboratives has shown that regular, continuing involvement by the staff of state commissions is invaluable in moving these proceedings along and in facilitating more expeditious resolution of issues that can be addressed without a formal adjudication. Progress made in the collaborative initiated by the New York Public Service Commission, and in which its staff actively participated, is a good example. MCI WorldCom recognizes the Commission's desire to minimize expenditure of its resources. But if Bell Atlantic and GTE are not required to satisfy before they merge conditions intended to open local markets, commitment of resources early in the process will both produce faster progress and minimize the need for enforcement action later. In any event, the Commission should commit to devote the resources necessary to investigate any possible violation of the conditions and to take swift and effective enforcement concerning any violation. *See SBC-Ameritech Order* ¶ 360.

Tying

The merger would increase the competitive harm resulting from tying local advanced telecommunications services to both Internet services and local voice service. *See* note 7 above. The Commission should condition the merger on Bell Atlantic-GTE's commitment to provide (through an ILEC or affiliate) advanced services on reasonable and nondiscriminatory terms to customers who purchase voice or Internet services from competitors. Bell Atlantic-GTE would

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[20] Paragraph 49.b should provide that Bell Atlantic and GTE's initial compliance plan be made available to interested parties subject to a protective order, if it deserves to be treated as confidential at all.

be free to offer all three types of services to customers, but customers should be equally free to buy only those services they want from Bell Atlantic-GTE. Prohibiting these anticompetitive practices would simply bring Bell Atlantic-GTE into compliance with sections 251(c)(3), 201(b), and 202(a), and is consistent with the anti-bundling principles previously applied by the Commission, as well as the antitrust laws. *See* MCI WorldCom Clarification Petition at 4-5. ILECs have no legitimate basis to refuse to provide xDSL-based services on a stand-alone basis to any customer who wishes to subscribe to them: this arrangement is straightforward to implement from a technical standpoint; and Bell Atlantic-GTE would be free to charge the same retail rates for advanced services to customers who purchase voice services from competitors as from themselves. *Id.*

CONCLUSION

The application of Bell Atlantic and GTE should be denied. The proposed merger of Bell Atlantic and GTE would harm the public interest because it would reduce local and long-distance competition and threaten Internet competition. If the Commission decides to consider granting the application subject to conditions, it should impose substantially stricter and more effective conditions than those proposed by the Applicants.

Respectfully submitted,

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Dated: March 1, 2000

CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify, that on this first day of March, 2000, I have caused to be delivered by hand, a true and correct copy of MCI WorldCom's Comments in the matter of Bell Atlantic and GTE Corporation Application for Request of Transfer of Control to Bell Atlantic of Licenses and Authorization on the following:

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